HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 10-A / 03 S/S

Bhim Singh Rawat

Vs

Director General Medical Health

Department lucknow

Approved for reporting.

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~~Not approved~~ ~~for reporting~~

Date of decision 7.7.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 10-A (SS) of 2003
(Old Number 6190 of 1997)

Bhim Singh Rawat ..... Petitioner

Versus

1. Director General, Medical Health Department Lucknow
2. Joint Director, Health Department State Vaccines Institute, Patwadangar Nainital
3. State of U.P. ..... Respondents

Sri S.S. Chauhan, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: July 07, 2005

Hon'ble Rajesh Tandon J.

By the present writ petition the petitioner has prayed for the issue of a writ of certiorari quashing the order dated 30.10.1997 annexure –3 to the writ petition.

Briefly stated the petitioner was initially appointed in the Health Department as a Lab Attendant vide order dated 8.2.1978 and he joined his services on 11.2.1978. After completing service of about 10 years he was promoted to the post of Junior Clerk on 31.7.1987. Thereafter the petitioner continued to work as junior clerk and he was confirmed on that post on 2.8.1992. The petitioner has also submitted that he was awarded selection grade after completing 8 years satisfactory service as Junior Clerk. However, opposite party no. 1 on

30.10.1997 has passed the impugned order and reverted the petitioner to the post of Lab Assistant on the grounds that on the date of his promotion from class IV to Class III he had not completed five years service. Another ground given in the order is that Additional Director had filed affidavit before the Public Service Tribunal, Lucknow that the promotion to the petitioner was given by relaxing the rules as the father of the petitioner was working in the department who died in harness. Another ground for reversion order was given that the Tribunal has declared the promotion of the petitioner against the rules.

The contention of the petitioner is that no opportunity of hearing has been given to the petitioner before passing the impugned order and the order passed by the respondent no. 1 is contrary to the principles of natural justice. The petitioner has already completed 10 years service on the promotional post and he is confirmed on that post. The impugned order is malafide with the sole intention that Smt. Savitri Arya may not get the advantage of the Tribunal's order in her favour and the respondent authorities may save their skin for contempt of court, proceedings for which are pending before the Tribunal.

The respondents filed counter affidavit and reiterated the grounds mentioned in the reversal order dated 30.10.1997.

I have heard the learned counsel for the parties and have perused the record.

It has been contended on behalf of the petitioner that no opportunity of hearing was afforded to the petitioner before passing the impugned order for his reversion from class III post to class IV post. No doubt the respondent no. 1 being the superior officer of the respondent department has right to re-examine the order passed by his subordinate in the

administrative capacity, but at the same time it is incumbent upon him to observe the principles of natural justice before passing any order adverse to the interest of any subordinate official.

The Apex Court in the case D.K. Yadav vs. J.M.A. Industries Ltd; (1993) 3 SCC 259 has held as under:

"It is a fundamental rule of law that no decision just be taken which will affect the right of any person without fist being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. In Mohinder Singh Gill vs. Chief Election Commissioner (1978) 1 SCC 405 the Constitution Bench held that civil consequences covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehension connotation every thing that effects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th Edn. Page 1487 defined civil rights are such as belong to every citizen of the state of country..... they include.....rights capable of being enforced or redressed in a civil action....In State of Orissa vs. (Miss) Binapani Dei (1967) 2 SCR 625 this Court held that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence is support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principle of natural justice.

In State of W.B. vs. Anwar Ali Sarkar 1952 SCR 284: AIR 1952 SC 75 per majority, a seven Judges Bench held that the rule of procedure laid down by law comes as much within the purview of Article 14 0f the Constitution as any rule of substantive law. In Maneka Gandhi vs. Union of India (1978) 1 SCC 248 another Bench of seven Judges held that the substantive and procedural laws and action taken under them will have to pass the test under Article 14. The test of reason and justice cannot be abstract. They cannot be divorced from the needs of the nation. The tests have to be pragmatic otherwise they would cease to be reasonable. The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority, which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must taken care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way, which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice."

The Apex Court in the case Shrilekha Vidyarthi vs. State of U.P. AIR 1991 SC 537 has held as under:

"It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of

arbitrariness which is the crux of Art. 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test is every state action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

…….. ……..

Every Stage action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you.' This what men in power must remember , always.

Almost a quarter century back, this Court in S.G. Jaisinghani vs. Union of India (1967) 2 SCR 703, at pp. 718-19 : (AIR 1967 SC 1427 at p. 1434), indicated the test of arbitrariness and the pitfalls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is

unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law (see Dicey "Law of the Constitution" -

Natural justice requires that once the respondents have promoted the petitioner to post of junior clerk and he completed more than 10 years service on that post, he has been confirmed on that post and has also got selection grade, he was entitled to be heard before any order for his reversion has been intended to be passed by the respondents. A perusal of the record shows that no opportunity was given to the petitioner for being heard before passing the order against him. The order, therefore, was passed by the respondent no.1 in utter violation of the principles of natural justice.

Accordingly, the writ petition is allowed and the impugned order dated 30.10.1997, annexure-3 to the writ petition is hereby quashed. Respondents are directed to reinstate the petitioner on the post of Clerk on which he was working. However, liberty is given to the respondents to pass afresh order, if the circumstances so require, after affording opportunity of hearing to the petitioner.

No order as to costs.

Dated: July 07, 2005 **Rajesh Tandon J.**
*Dhyani